IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 919 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE SHARAD D.DAVE

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

STATE OF GUJRAT - Appellant(s)
Versus
MANOJBHAI BASARMAL DATVANI & 2 - Opponent(s)

==========

Appearance :
Mr.Falguni Patel, APP for Appellant(s) : 1,
MR CB DASTOOR for Opponent(s) : 1,
None for Opponent(s) : 2 - 3.

==========

CORAM : HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 31/01/2007

CAV JUDGMENT

1. This is an appeal filed by the appellant State under Section 378 of the Code of Criminal Procedure, 1973 challenging the judgment and order

dated 7.5.1997 passed by the learned Chief Judicial Magistrate, Nadiad in Food Case No.8 of 1992, whereby the Chief Judicial Magistrate, Nadiad had acquitted the accused from the offence punishable under Sections 2(ia), 2(ia)m, 7(1) and 16 (1) of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as `the Act') under the provisions of Section 248 of Criminal Procedure Code.

2. The short facts giving rise to this appeal are such that :

The sample of groundnut oil was collected from the shop of the ownership of accused no.1 by name Manohar Kirana Store on 21.2.92 at about 14.00 hours in the afternoon and on sending the same for analysis to the Public Analyst, it was found adulterated. Therefore, necessary sanction to prosecute the accused was obtained and the complaint was filed against the accused.

3. After receiving the complaint, summons were issued to the accused and on the application at Exh.3 being given, accused nos.2 and 3 were added. Thereafter, the charge was framed against the accused and as the accused pleaded not guilty and claimed to be tried, after recording the evidence and hearing the learned counsel for both the sides, learned Chief Judicial Magistrate acquitted the accused from the offence punishable under Section 2(ia), 2(ia)m, 7(1) and 16 (1) of the Prevention of Food Adulteration

Act, 1954 of the Act under Section 248(1) of Criminal Procedure Code, against which the present appeal is filed.

4. Heard Ms.Falguni Patel, learned APP for the appellant – State and Mr.C.B.Dastoor for the respondents.

5. The judgment is challenged on various grounds mentioned in para 4 of the memo of appeal. Ms.Falguni Patel, learned APP has taken me through the relevant part of the judgment and oral as well as documentary evidence led during the course of trial.

6. Mr.C.B.Dastoor for the respondents submitted that the application given by accused no.1 to add accused nos.2 and 3 as accused is wrongly given and the learned Chief Judicial Magistrate has rightly come to the conclusion that when there was no label on the tin from which the sample was given, these two accused cannot be convicted as there is no evidence to show that the groundnut oil was purchased from these accused by accused no.1 and that the same oil was given as sample to the Food Inspector.

7. He further submitted that the learned Chief Judicial Magistrate has rightly come to the conclusion that the sanction was obtained by the In-charge of the Local Health Authority which cannot be said to be a valid sanction under Section 20 of the

Act. In support of his submission, Mr.Dastoor has relied on the judgment in Criminal Appeal No.299 of 1976, wherein the Court (Coram : A.N.Surti,J) has observed in paras 3 and 8 as under :

> "3. The learned Magistrate acquitted the respondent-accused as he came to the conclusion that the Deputy Medical officer (Health) – Shri Vyas, was not a duly appointed medical officer and, therefore, he could not have accorded the sanction to prosecute the respondent – accused. He also observed that the complainant even in his evidence has admitted that Shri Vyas, Deputy Health Officer was in charge. The complainant also admitted that there was only one post in Ahmedabad Municipal Corporation of the Medical Officer (Health) and on that post, Shri Barot was appointed and not Shri Vyas. Under the circumstances, he took the view that the sanction to prosecute the respondent – accused was not accorded by a duly appointed as Medical Officer (Health), and hence, the statutory function could not have been discharged by Shri Vyas who was not duly appointed as medical officer (Health).
>
> 8. It is well settled that where a statutory duty is to be performed by a duly appointed designated officer of a certain

rank and not by his subordinate, even if subordinate is temporarily performing the duties of the offence of the superior, section 19 of the Bombay General Clauses Act, 1904 could not and does not have the effect of making and appointing or substituting the subordinate in place of the superior irrespective of the language of the statute in question. The statute has imposed a certain duty on an officer of certain status and experience with a due sense of responsibility and circumspection and he has to apply his mind for granting the necessary sanction to file the complaint against the accused persons. In the case before me only the medical officer (Health), was duly authorized by the Municipal Corporation to grant necessary sanction, whereas the record reveals that the Deputy Medical Officer Shri Vyas had accorded the sanction to prosecute the respondent – accused."

8. He further submitted that learned Chief Judicial Magistrate has rightly come to the conclusion that the report at Exh.41 of the Central Food Laboratory is not sufficient to prove the charges against the accused because of the fact that there is no mention of specific measurement of castor oil or that the same is injurious to health.

9. He also submitted that learned Chief

Judicial Magistrate has rightly come to the conclusion that Rule 13(2-A) of the Act is violated because the letter to send the sample to the Central Food Laboratory was sent on 7.7.1992 but the sample was received from the Local Health Authority on 13.7.1992 which is not within five days. In support of his submission, he relied on Section 13(2-A) which reads that when an application is made to the Court under sub-section (2), the Court shall require the Local (Health) Authority to forward the part or parts of the sample kept by the State Authority and upon such requisition being made, the said Authority shall forward the part or parts of the sample to the Court within a period of five days from the date of receipt of such requisition.

10. Learned advocate Mr.Dastoor for the respondents has cited various decisions in support of his submissions.

11. All the aforesaid points were raised by the learned advocate for the accused before the learned trial Judge and the learned trial Judge has discussed all the points mentioned hereinabove on behalf of the accused and the authorities cited on behalf of the accused and came to the conclusion to acquit all the accused.

12. In view of the above, I do not find any perversity or illegality in the findings. It is now well settled that when the appellate forum is in

agreement with the reasons assigned by the lower court, then it is not necessary to rewrite those reasons. There is no scope of reappreciation of the evidence unless the Appellate Court finds perversity in the finding as well as gross error in appreciation of the evidence. I am of the opinion that this cannot be said to be rare case where the acquittal is required to be converted into that of conviction.

13. In view of the foregoing discussion, the following order is passed.

14. The appeal of the State is dismissed. The bail bond, if any, shall stand discharged.

(Sharad D.Dave,J)

pathan